

No fee per
Govmt. Code 27383

RECORDING REQUESTED BY:

Port of Oakland
530 Water Street
P.O. Box 2064
Oakland, CA 94604

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Bldg. F, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California Coastal
Cleanup Operations Branch



2004406777

09/08/2004 03:30 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



5 PGS

Space Above this Line Reserved for Recorder's Use

AMENDMENT TO COVENANT TO RESTRICT USE OF PROPERTY

(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471)

The Charles P. Howard Terminal Site, Oakland, Alameda County

Entire Parcels: Parcel #s 0-405-4 and 0-410-6-1

Portion of Parcels: Parcel #s 0-405-1, 0-405-2, 0-405-3-1, 0-410-1-5, and 0-410-3

This Amendment to Covenant to Restrict Use of Property Environmental Restriction, The Charles P. Howard Terminal Site, Oakland, Alameda County ("Amendment") is made by and between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Covenantor" or the "Port") and the Department of Toxic Substances Control (the "Department") (collectively, the "Parties").

RECITALS

WHEREAS, the Port and the Department entered into that certain Covenant to Restrict Use of Property Environmental Restriction, The Charles P. Howard Terminal Site, Oakland, Alameda County recorded in the Official Records of Alameda County on March 3, 2003, as document number 2003121181 ("Covenant"); and

WHEREAS, the Port and the Department wish to amend and modify the terms of the Covenant;

NOW, THEREFORE, in reliance on the above Recitals and in consideration of the mutual agreements, covenants, and other obligations set forth herein, the Parties agree as follows:

1. **AMENDMENT.** Section 4.02 Prohibitive Activities of the Covenant will be amended, and a new subsection (g) shall be added, as follows:

(g) **Emergency Response Action/Notification:** Subsections (b) and (c) of this Section 4.02 shall not apply in the event of any emergency or time-sensitive action or occurrence (such as a fire, earthquake, explosion, equipment or utility failure or malfunction) which requires breaching the Cap (hereinafter referred to as "Emergency Event"). However, the Owner shall immediately take all appropriate action to prevent, abate, or minimize any release associated with such Emergency Event and shall immediately notify the Department of the Emergency Event. The Owner shall take such appropriate action in accordance with all applicable provisions of this Amendment and the Covenant. Within seven (7) days of the onset of such Emergency Event, Respondent shall furnish a report to the Department, signed by the Owner's Project Engineer/Geologist, describing the Emergency Event and the measures taken in the response thereto. Nothing in this section shall be deemed to limit any other notification requirement to which the Owner may be subject under the Covenant.

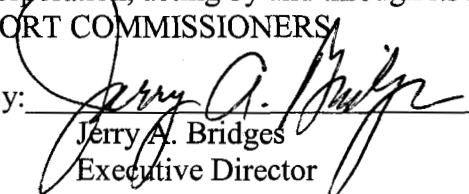
2. **WARRANTY OF AUTHORIZED SIGNATORIES.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Amendment on behalf of the Parties for whom he or she purports to sign.

3. **REAFFIRMATION.** This Amendment is incorporated into the Covenant and all other terms and conditions of the Covenant are hereby reaffirmed.

IN WITNESS WHEREOF, the Parties enter into and date this Amendment this 12 day
of August, 2004.

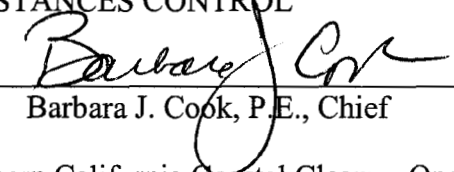
THE CITY OF OAKLAND, a municipal
corporation, acting by and through its BOARD OF
PORT COMMISSIONERS

By: _____


Jerry A. Bridges
Executive Director

STATE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

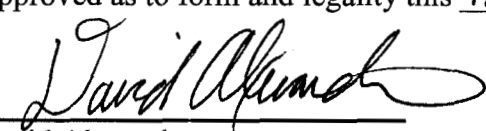
By: _____


Barbara J. Cook, P.E., Chief

Northern California Coastal Cleanup Operations
Branch Department of Toxic Substances Control

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE
FOR ANY PURPOSE UNLESS IT IS SIGNED BY THE PORT ATTORNEY

Approved as to form and legality this 12 day of August, 2004


David Alexander
Port Attorney

Port Resolution No.: 04222

P.A. No.: 04-571